

## **ARTICLE 20:       REDUCTION IN FORCE**

### **PURPOSE**

- 20.1   This article implements Section 611 of the Act. This article establishes the procedures the Employer will use if it becomes necessary to run a reduction in force (RIF) action in the Foreign Service.

### **DEFINITIONS**

- 20.2   Competitive Area: The organizational and geographical boundaries within which individuals compete in a RIF.
- 20.3   Days: Calendar days unless otherwise stated.
- 20.4   Furlough (under RIF procedures): The placement of an individual in a temporary non-duty and non-pay status for more than 30 consecutive days (or more than 22 work days, if done on a noncontinuous basis), but not more than one year, when the action is based on one of the RIF reasons and is not in accordance with preestablished conditions of employment. (See Article 21 (Furlough) regarding furloughs for 30 consecutive days or fewer, or for 22 noncontinuous work days or fewer.)
- 20.5   Liquidation Procedures: The release of all individuals in a competitive area for the purpose of completely closing the work site.
- 20.6   Notice: An official written communication provided to an individual announcing that he/she will be affected by a RIF action.
- 20.7   Reduction in Force: A personnel action that releases an individual by separation or furlough for more than 30 days due to lack of work, shortage of funds, insufficient personnel ceiling, reorganization, or lack of appropriations.
- 20.8   Relative Standing: An individual's relative position on the Selection Board rank order list.
- 20.9   Retention Group: See section 20.24 of this Article.
- 20.10   Retention Register: A list of competing individuals organized by class and retention group within a competitive area.
- 20.11   Retention Standing: An individual's relative position on the retention register based on length of service, relative standing, veterans preference, and retention group.

- 20.12 Sanitized retention register: Copy of the retention register with individual names and Social Security numbers deleted (except for the name of the individual requesting the information in accordance with section 20.29(d) of this Article), but including retention points received for each category and total retention points received for each individual.
- 20.13 Unsanitized retention register: Copy of the retention register including all individual names, retention points received for each category, and the total retention points received.
- 20.14 Veterans Preference: Additional credit given to competing individuals based on military service as defined by 5 U.S.C. 2108, subject to 5 U.S.C. 3501(a)(3). Any future changes affecting these provisions will also apply to members of the Foreign Service.

## POLICY

- 20.15 Reductions in personnel strength will be accomplished, whenever possible, by planning and attrition. Every effort will be made to avoid use of RIF procedures to effect such reductions. RIFs will be implemented only if their necessity cannot reasonably be abated through other means, such as; hiring freezes, furloughs, reduction in travel and training that is not critical to the mission of FAS, or reduction of contracts with consultants or contractors, and any other expenses that are not critical to the mission of FAS.
- 20.16 The Employer will notify the Union in advance of any necessity for a RIF with sufficient lead time to permit predecisional involvement by the Union. The Union will assist the Employer in developing plans for effecting the RIF as fairly as possible.
- 20.17 The Employer will issue a general notice normally at least 120 calendar days in advance of a pending RIF. The notice will contain the anticipated effective date of the RIF and the cut off date for inclusion of additional information in an individual's official personnel file and performance folder. Individuals may make reasonable use of time, equipment, and supplies for the purpose of finding other employment as long as it does not unduly interfere with the Employer's business.
- 20.18 The employer will make every reasonable attempt to rehire individuals separated under RIF. (See section 20.36 Rehire Priority)
- 20.19 Outplacement assistance will be provided to all individuals who are separated as a result of RIF.

## RIF PROCEDURES

### 20.20 NOTICE TO EMPLOYEES

- a. Notice Period
  - 1. Written specific RIF notices to employees will be issued not less than 60 days before the RIF effective date.
  - 2. Specific RIF notices issued to employees do not require an extension of the time period if an amendment favorable to the individual is made. However, if an amendment results in a more severe action, a new 60 day specific RIF notice is required.
- b. Content of the Notice to Employees: The written specific notice of RIF issued to an individual will include the following information:
  - 1. A general statement of the reasons the RIF is being conducted;
  - 2. A statement of the specific action to be taken i.e., separation, furlough, or reassignment;
  - 3. The effective date of the RIF action;
  - 4. The information on which the individual's RIF retention standing is based;
  - 5. The place where the individual may inspect the regulations and records pertinent to his/her case;
  - 6. If applicable, the reasons for retaining a lower standing individual;
  - 7. If applicable, a statement that individuals are being separated under liquidation procedures without regard to retention standing and the date that the liquidation will be complete;
  - 8. If applicable, the individual's rights, entitlements, and responsibilities with respect to outplacement programs that may be available;
  - 9. If applicable, notice to the individual of the right to re-employment consideration;
  - 10. If applicable, information on applying for unemployment compensation;

11. If applicable, information on the individual's eligibility to continue health and life insurance benefits; and/or,
12. The individual's appeal and grievance rights, the time limits for filing, a copy of the Merit Systems Protection Board (MSPB) appeal form, the address of the appropriate MSPB office and the location of the MSPB regulations regarding the processing of appeals.

#### STATUS DURING THE NOTICE PERIOD

20.21 The notice period begins the day after the individual receives the RIF notice. Neither the day the individual receives the notice nor the effective date of the RIF action may be counted in computing the notice period. Generally, individuals will remain in a duty status during the RIF notice period. Under emergency conditions due to lack of work, lack of funds, or lack of appropriations, individuals may be placed on annual leave, leave without pay, or other non-pay status, with or without their consent, for all or part of the notice period, with the prior approval of the Administrator/FAS and in consultation with the Union.

#### 20.22 LEAVE WITHOUT PAY (LWOP) AND ANNUAL LEAVE USAGE

- a. Individuals who receive an initial or subsequent notice of separation or furlough due to RIF will not be carried on LWOP beyond the effective date of the RIF action.
- b. Individuals will not normally be carried in annual leave status beyond the effective date of a RIF action. However, if an individual being separated would become eligible to retire with an immediate annuity if retained in pay status beyond the effective date of a RIF action, he/she will be allowed to use accrued annual leave until he/she becomes eligible to retire.

#### COMPETITIVE AREAS FOR RIF

20.23 The Employer has made the determination that the competitive area shall be worldwide.

#### 20.24 Establishing Retention Register.

- a. Within each class, the retention register will be divided into three retention groups:
  1. Retention Group 1 - Commissioned career members and tenured Foreign Service secretaries.

2. Retention Group 2 - Non-commissioned career candidates and untenured Foreign Service secretaries.
3. Retention Group 3 - Individuals serving on limited career extensions.
- b. Individuals in Retention Group 3 will be released first, then individuals in Retention Group 2, and finally individuals in Retention Group 1. Individuals with the lowest number of retention points on the retention register will be released first.

20.25 An individual's standing on the retention register is determined by accumulated retention points based on length of service, relative standing, and veterans preference.

- a. Length of Service: Foreign Service employee will receive one (1) retention point for each full year of completed Federal (including military) service. Completed service will be calculated based on the effective date of the RIF. For purposes of a RIF, the Service Computation Date for leave will be used in determining a Foreign Service employee's length of service.
- b. Relative Standing
  1. Four (4) points will be given for each time an individual has been ranked in the upper third of the class in which rated during the last five (5) evaluation periods before the RIF effective date.
  2. Three (3) points will be given for each time an individual has been ranked in the middle third of the class in which rated during the last five (5) evaluation periods before the RIF effective date.
  3. One (1) point will be given for each time an individual has been ranked in the lower third of the class in which rated during the last five (5) evaluation periods before the RIF effective date.
  4. If an individual does not have five (5) evaluation periods in the Foreign Service, Civil Service evaluations will be credited to the extent necessary. If a Civil Service evaluation is used, the individual will receive four (4) points for an Outstanding performance rating, three (3) points for a Superior rating, three (3) points for "Pass" under a Pass/Fail system, and one (1) point for a fully successful rating.
  5. If an individual does not have a combination of five (5) Foreign Service and Civil Service evaluations, the points for each rating received shall be added together and divided by the number of actual ratings received, and rounded

using mathematical rounding rules. This score shall become the rating of record for the years in which the individual does not have an actual rating, in order to bring the total number of evaluation periods to five (5).

6. When using Foreign Service evaluations, the relative standing of all individuals in a class must have been determined at least sixty (60) days prior to the issuance of the RIF notice for that evaluation period to be used in determining the retention standing. Civil Service evaluations used must have been received in the Servicing Personnel Office (SPO) not later than 60 days prior to the issuance of the RIF notice.
- c. Veterans Preference: Points will be distributed as follows for those who are eligible:
  1. Members who have compensable service connected disabilities of 30% or more - 3 points.
  2. All other veterans - 1 point

#### BREAKING TIES IN RETENTION STANDING

20.26 If there is a tie on the retention register, the tie will be broken by using the earliest service computation date for leave. The individual with the earliest computation date for leave will be placed higher on the retention register.

#### PLACEMENT IN LIEU OF RIF

20.27 Based on the retention standing of individuals on a retention register, the Employer may choose to reassign an individual at class to a vacant Foreign Service position in lieu of separation by RIF. The offer of reassignment will be made to the individual with the greatest number of retention points (adjusted by the tie-breaking factor) that has been identified for RIF.

#### RECALL FROM FURLOUGH UNDER RIF

20.28 All individuals, regardless of class, will be re-ranked in a single listing based on their retention points computed under the RIF procedures. Individuals with the highest points will be recalled from furlough first. In the event of a tie, the individual with the earliest service computation date for leave will be placed higher on the listing.

#### 20.29 RIGHTS TO INFORMATION FROM THE EMPLOYER

- a. The Union reserves its statutory right to information.
- b. The Employer will provide timely notice to the Union that the final unsanitized retention register(s) and all draft, preliminary retention registers are available for review such that adequate time is provided for Union input.
- c. All individuals whose names appear on the retention register are entitled to review the records and information used in determining their retention standing.
  - 1. Requests to review this data must be made to the SPO in writing.
  - 2. If the individual making the request desires to grant access to this information to a representative, that representative must be named in the written request.
- d. An individual adversely impacted by the RIF action is entitled to review the sanitized RIF retention register for his/her class.
- e. A copy of the unsanitized RIF retention register used in running a RIF action will be provided to AFSA/FAS on the day RIF notices are provided to employees.
  - 1. It is understood by AFSA/FAS that the copy of the RIF retention register provided to the Union may not be copied and/or released to individuals because of the sensitive personal information contained in it.
  - 2. Also, it is understood that AFSA/FAS will refer to the SPO any individual desiring to review the RIF retention register or review the compilation of their personal RIF retention points. A representative of AFSA/FAS may accompany the individual during this review if the individual making the review so desires.

## BENEFITS

### 20.30 RETIREMENT BENEFITS

- a. Foreign Service employees who are separated under RIF and who are eligible for an immediate annuity on the effective date of the RIF will receive retirement benefits in accordance with applicable statutes and regulations.
- b. Individuals eligible to receive an immediate annuity are not eligible to receive severance pay.

20.31 SEVERANCE PAY: Foreign Service employees who are separated under RIF and who are not eligible for an immediate annuity on the effective date of the RIF will be paid severance benefits in accordance with applicable statutes and regulations.

#### 20.32 DEFERRED ANNUITIES

- a. Foreign Service employees who are separated under RIF and who are not eligible for an immediate annuity but who have at least five (5) years of credit toward retirement, may elect to receive an annuity in accordance with applicable statutes and regulations. In accordance with current applicable statutes and regulations, this deferred annuity will commence at age 60.
- b. In lieu of deferred annuities, Foreign Service employees may elect to receive a refund of the contributions they made in accordance with applicable statutes and regulations.

#### APPEAL AND GRIEVANCE PROCEDURES

20.33 An individual has the right to appeal the RIF action to the Merit Systems Protection Board (MSPB) or use the Foreign Service grievance procedure with ultimate appeal to the Foreign Service Grievance Board (FSGB). An individual cannot do both.

#### 20.34 MSPB APPEALS

- a. Appeals must be filed directly with MSPB during the 30 calendar days beginning with the day after the date on which the individual is separated or furloughed under RIF.
- b. The filing of an appeal with the MSPB does not change the effective date of the action proposed in the RIF notice.

#### 20.35 GRIEVANCES

- a. Grievances will be limited to cases of reprisal, interference in the conduct of an individual's official duties, or similarly inappropriate use of the authority under Section 611 of the Act.
- b. The individual must first file a grievance with the SPO prior to the effective date on which the individual is separated or furloughed under RIF. This filing does not change the effective date of the action proposed in the RIF notice.
- c. If the grievance is not resolved within the Agency, the individual may then file a grievance with the FSGB. This filing does not change the effective date of



the action proposed in the RIF notice.

- d. Any individual separated under RIF procedures is not entitled to interim relief. In other words, regardless of the nature or status of an individual's respective grievance, the individual will be separated on the effective date of the RIF.

#### REHIRE PRIORITY

20.36 Foreign Service employees separated under RIF will be rehired into the Foreign Service before any employees are converted through the lateral entry process, for a three-year period beginning on the date of the RIF. Individuals will be rehired at the class held on the date of separation. All individuals, regardless of class, will be re-ranked in a single listing based on their retention points computed under the RIF procedures. Individuals with the highest points will be rehired first. In the event of a tie, the individual with the earliest service computation date for leave will be placed higher on the listing. Any individual who declines an offer for rehire will be permanently removed from the rehire priority listing.

#### PLACEMENT ASSISTANCE

- 20.37 Placement assistance will be offered in accordance with the Federal, Departmental, and Agency Career Transition Assistance Program (CTAP).
- 20.38 The Employer will provide resume-writing software and access to the Internet and allow reasonable use of its equipment to prepare resumes by individuals seeking outplacement to the extent that such activities do not interfere with ongoing Agency work. Agency equipment shall include but not be limited to: computer, phones, fax machines, printers and copiers.
- 20.39 The Employer will grant administrative leave to the maximum extent possible without unduly interfering with the employer's business to attend the following:
- a. USDA Career Transition Resource center;
  - b. job fairs;
  - c. job interviews;
  - d. seminars, counseling services and appointments with outplacement consultants; and,
  - e. other job search activities.

20.40 The Employer will make facilities available for:

- a. in-house job fairs; and,
- b. office space for outplacement consultants, counseling services, and classroom space for retirement and job hunting seminars.

20.41 The Employer will obtain and make available:

- a. access for bargaining unit members to search job posting bulletin boards on Internet and other electronic sources; and,
- b. retirement and job hunting seminars, counseling services, and outplacement consultants.